

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 71/Lab./AIL/J/2014, dated 21st April 2014)

NOTIFICATION

Whereas, an award in I. D. (L) No. 26/2011, dated 7-3-2014 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, M/s. Hindustan Unilever Ltd. (Tea Unit), Puducherry and its workman Thiru N. Chandiramogane, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab/L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Tmt. S. MARY ANSELAM, M.A., M.L.,
Presiding Officer (FAC),
Labour Court.

Friday, the 7th day of March 2014

I.D. (L) No. 26/2011

N. Chandiramogane . . . Petitioner

Versus

The Managing Director,
M/s. Hindustan Unilever Ltd. (Tea Unit),
Puducherry. . . Respondent

This industrial dispute coming on 28-2-2014 for final hearing before me in the presence of Thiru R. Ravikumar, Advocate for the petitioner, Thiruvalluvar L. Sathish, T. Pravin, S. Velmurugan, V. Veeraragavan and P. Rajesh, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 175/ AIL/LAB/J/2011, dated 24-10-2011 for adjudicating the following :

(1) Whether the dispute raised by Thiru N. Chandramogane, against the management of M/s. Hindustan Unilever Tea Unit Ltd., Puducherry over non-employment is justified?

(2) If justified, to what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposted from the claim petition runs thus :

The petitioner joined the services of respondent on 1-6-1998. On 20-1-2011, at about 3.20 p.m. onwards, petitioner was given a job of supervising the loading materials into a carrier. He has completed his assignment at about 5.30 p.m. After 5.30 p.m. when petitioner was about to start to his home, he was detained by respondent officers alleging that he overloaded some item in the carrier on that day. Respondent management threatened petitioner giving theft complaint with a local police station. He was blackmailed to give voluntary resignation, and he was forced to sign his resignation letter, dated 20-1-2011. On 20-1-2011, the petitioner was detained inside the factory for the whole night and was tortured. His cell phone was seized and not talked to his family members. Principles of natural justice and fair play was not followed in terminating petitioner. Voluntary resignation was obtained by fraud, coercion and undue influence. No charge sheet, show cause notice has been issued to petitioner and no explanations were called for the petitioner. No domestic enquiry was conducted against petitioner before terminating him as per the Industrial Disputes Act. Dispute did not get settled before LOC and get present industrial dispute. The petitioner claims reinstatement with back wages.

3. *Per contra*, traversing the averments the claim statement, the respondent filed the counter with the averments which runs thus:

Petitioner was employed as Assistant Operator on 1-6-1998 and his services were confirmed on 3-12-1999 as daily rated workman in 1999. Post accident, he was accommodated in commercial operations in January 2009 to give him light work. Petitioner's routine job was to monitor loading and dispatch of finished goods based on daily indent received by him from commercial department. While loading materials in carrier, petitioner was required to be physically present throughout loading process to cross check loading cartons and boxes, mark those loading materials in indent and ultimately sign the indent sheet after cross checking loaded materials.

Only after petitioner's signature in approval of due and proper loading of materials in terms of indent, the loaded vehicle will be moved out of loading area. On 20-1-2011, petitioner was assigned with job of loading specific finished materials in lorry bearing Registration No. TN28AA0235 with a indent for the items, (1) 3rd 2 kg.-271 cases, (2) 3rd 245 g-153 cases and (3) Taaza 490g-1 case. Loading of those materials was done in the presence of petitioner through two contract workers and after loading the materials in said lorry, petitioner has signed the indent sheet confirming that consignment was loaded only as per indent given by commercial department of respondent. As part of routine, random checkup, the truck bearing Registration No.TN28AA0235 was checked and materials were unloaded excess loading of materials were found namely (1) 3rd 2 kg.-278 cases namely 7 cases more than the indent value (2) 3rd 245 g-234 cases namely 81 cases more than the indent value and (3) Taaza 490 g - 1 case. The counting was witnessed in the presence of a Security Guard on duty at loading point, the truck driver of Varun Logistics, the supervisor of loading and unloading contract M/s. SNC, two loading contract labourers. In addition to this, the counting was done by another employee K. Chandrasekar who was also working in commercial department, the Commercial Manager, The Executive and the General Shift Executives and counting was done individually by each stakeholder and copies signed by them.

The value of excess items was found in the said lorry was to the tune of ₹ 2.85 lakhs. The petitioner was caught red handed while attempting to steal the materials and he admitted his guilt and pleaded mercy. Since materials were recovered and petitioner was pleading mercy and even volunteered to quit his job, respondent did not lodged any police complaint against him to save himself from ignominy and avoid any criminal complaint, petitioner voluntarily resigned his job on 20-1-2011. Since petitioner voluntarily submitted his resignation letter, he was relieved from services with immediate effect. Only for the reason, no domestic enquiry was conducted against him. Petitioner as an afterthought, to regain his lost employment, is taking his chances by raising an industrial dispute on false claims of forcible resignation. Hence the claims of the petitioner is neither maintainable in law nor on facts and hence the claim petition deserves to be dismissed.

4. On the side of the petitioner PW.1 was examined and Ex.P1 to P10 were marked. Ex.R1 to R3 were marked in cross-examination of PW.1. Respondent examined its Senior Executive-HR as RW.1 and marked as Ex.R4 to R15. Respondent summoned RW.2 - Mr. Kuppusamy, RW.3 - Mr. Chandrasekar, RW.4 - Mr. Veeramani who

witnessed process of counting and found that there was excess loading in the lorry bearing Registration No. TN28AA0235.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point:*

Ex.R1, dated 20-1-2011 is the resignation letter of the petitioner. Ex.P2, dated 21-1-2011 is the letter given by respondent accepting petitioner's resignation and relieving him from service. It is also countersigned by petitioner. PW.1 admitted having executed Ex.R1 and P2. RW.3 is also a co-employee of petitioner and he stood witness to Ex.R1 and he also spoken about execution of Ex.R1 by the petitioner. So, it is an admitted fact that the petitioner gave Ex.R1 which is his letter of resignation. But the petitioner challenges Ex.R1 on the ground that it was obtained by force and coercion and threat. So the burden of proving coercion in executing Ex.R1 is on petitioner, on the side of the respondent CDJ 2013 MHC 3683, 2012 LLR 1276 and 2003 LLR 618 are pressed into service. As per the above citation, CDJ 2013 MHC 3683 Burden of proving duress in submitting resignation letter is on petitioner, once resignation letter is accepted the same cannot be withdrawn. In order to prove coercion on the part of the respondent no independent witness was examined and no document produced to prove petitioner's contention. No independent witness was examined on his side to prove coercion or undue influence in executing Ex.R1. If the petitioner was forced to sit inside a cabin from 5.30 p.m. to 3.30 a.m. it was witnessed by workers, officers and security guards of the factory. Petitioner could have examined at least one of them to prove such coercion. The non-examination of some of the workers in the factory is affecting the case of the petitioner. In Ex.P4, dated 21-1-2011 petitioner claimed that Mr. Subburayan, management representative, Mr. Hariharan, Production Manager, Mr. Subramani, the Factory Manager, Mr. Nagarajan, H.R Manager of P.P factory, Vadamangalam, Mr. Sanjay, Commercial Manager, Mr. Loganathan, Baskaran, Miss. Vijayalakshmi, Mr. Iyyasamy, Security Officer, Mr. Kannan and Govindan were present when petitioner signed Ex.R1 and they forced petitioner to sign his resignation letter. None of them were summoned and examined by petitioner to prove his case.

7. It was stated on the side of the petitioner he was relieved only by 3.00 a.m. when his normal duty time ended by 5.30 p.m. But he did not examine the family members to substantiate these facts. Further the petitioner nor his family members never gave a complaint against the respondent for the wrongful restraint, criminal intimidation or obtaining a false document by coercion and force. The petitioner received the relieving order without any objection.

In this regard 2009 LLR 1209 is pressed into the service.

No employer would like to retain such an employee who is not trustworthy, is dishonest, is a thief and who keeps his personal interests and that too by dishonest intentions before the interest of the employer.

So, it is proved through reliable evidence that the petitioner was detained in the office till 3.30 a.m. in the next morning cannot be believed even for that moment. It is argued on the side of the respondent that the petitioner challenged Ex.R1 belatedly and only with LOC. The petitioner did not raise any protest with respondent on the very next day namely 21-1-2011 or even on subsequent days. He approached the LOC only on 24-1-2011 namely 4 days from the date of his resignation. According to the petitioner he gave Ex.P3 letter, dated 21-1-2011 to the respondent. But there is no proof of service, petitioner gave Ex.P4, dated 21-1-2011 to LOC only on 25-1-2011 namely only after respondent submitted Ex.R15 to SP Rural.

In this connection 2003 (5) Bombay CR 153 is pressed into the service on the side of the respondent.

As per the above decision, in the above case it is held there is no hesitation in concluding that the teacher tendered voluntary resignation due to fear of the exposure and social scandal as a result of his unnatural activities. Mere telling the delinquent workman that he was caught red handed while committing the theft of company's property and that he was handed over to the police cannot be construed to be use of force or coercion. It is only to make him aware of the next consequence of his behavior. So, it is not possible to accept the version of the workman that he was forced and coerced to sign the resignation letter.

So, it is held that he cannot be reinstated. In the present case also no police complaint was given no family member was examined, no worker from the company is examined. So, Ex.R1 was obtained by force and coercion is not proved by the petitioner in this case. PW.1 in his cross-examination stated that on 20-1-2011, he did his work in a routine way and there was absolutely no untoward incident warranting his detention and obtaining his resignation. In order to compelled the petitioner to sign, Ex.R1 there must have been grave circumstance that warranted his detention, so the case of the petitioner that he was asked by the management and compelled him to resign for absolutely no reason is unbelievable. Ex.R2 is admittedly a handwritten letter given by the

petitioner at 7.50 p.m. wherein he has in his own handwriting categorically admitted that he has loaded excess materials that what he was required to load in the lorry. Ex.R2 completely belies the petitioner and gives a solid reason for petitioner submitting his resignation. It is clear admission of the attempted theft of petitioner, which was followed by his resignation letter in Ex.R1. Once theft is admitted by the petitioner and he has resigned to escape further prosecution, the petitioner cannot challenge the resignation alone.

In this regard CDJ 1996 GHC 046 is pressed into service on the side of the respondent.

As per the decision, the petitioner in his own handwriting admitted that he had taken two copper conductors with silver bolt and that was his serious mistake and he also sought pardon. This letter was followed by letter of resignation on the same date. Stating therein that he voluntarily gives up the job and no criminal case be pursued against him so that his reputation is not damaged. In view of the aforesaid letter of resignation, the respondent company accepted the resignation on the very date. Thereafter, the petitioner took somersault view and submitted that he had admitted his guilt and had given the resignation under threat and coercion. It is also the case of the petitioner that the company did not pursue the criminal case against the petitioner thereafter and no police action was taken against him. The resignation challenged on the grounds of coercion was disbelieved by the court so accepting the above decision in the present case also there is no possibility to believe that Ex.R1 is obtained by coercion.

It is argued on the side of the petitioner that no domestic enquiry was conducted in his case and so his termination is not legal. In the present case, the petitioner was caught red handed and in order to avoid the criminal prosecution and other consequences he did resign voluntarily and so there is no absolutely no domestic enquiry. As soon as the resignation was accepted by the respondent the employer employee stood severed and there was no scope for conducting no domestic enquiry.

Clause 29 of the Certified Standing Order of the respondent would read as follows:

Resignation - Workmen who desire to leave the company's service shall give to company the same notice as company is required to give them under these Standing Orders. Provided that when a workmen gives notice of resignation, the management shall be entitled to accept it with the immediate effect or at any time before the expiry of notice period. No resignation once submitted can

be withdrawn except with the permission of the management. So, in this case there is no scope for conducting domestic enquiry against the petitioner.

8. Further the misconduct proved before the court even in the absence of domestic enquiry. It is settled proposition of law that management is entitled to lead evidence before Labour Court and prove the alleged misconduct and justify the reasons for discharge, dismissal, retrenchment, termination or non-employment of worker. The petitioner cannot be reinstated in service as the respondent has proved with cogent oral and documentary evidence. The petitioner was caught red handed trying to load excess materials of the company with intentions of stealing the same. Excess material was loaded in the carrier is proved in this case. Ex.R3 is the manual sheet, containing the exact amount of materials that it was required to be loaded by the petitioner. It was duly signed by the petitioner. Ex.R2 is the hand written letter of petitioner admitting the excess loading. RW.1 to RW.4 clearly gave evidence that excess materials was found in such recounting, enquiry conducted with the respondent by the petitioner and resignation letter submitted by the petitioner. Ex.R5 to R13 are the hand written letters given by eyewitnesses about excess loading of materials by the petitioner. Nothing was elucidated in the cross-examination to discredit the evidence of the witnesses. So, the evidence produced on the side of the respondent clearly point out that petitioner attempted to commit theft of materials and caught red handed and only to save himself he has voluntarily resigned his job.

As per 2005 (5) Allahabad 360

In the above case, it is stated if resignation is voluntary and accepted no domestic enquiry is required. Even in case of no domestic enquiry Tribunal must give opportunity to management to prove charges and appreciate the evidence. Once theft by worker is proved then there is no question of reinstatement. In the present case also theft is proved through oral and documentary evidence. So, there is no possibility of reinstating the petitioner.

On the side of the petitioner, it is stated that some discrepancies are found in the evidence of RW.1 to RW.4 those discrepancies are minor in nature and those minor discrepancies are not sufficient for the petitioner to escape from criminal conduct.

As per 2004 STPL (LE) 34188 SC

Some amount of evidence is sufficient to prove the guilt of delinquent.

The prayer in the claim statement is the reinstatement of the petitioner. Since the petitioner is caught red handed while he was attempting to steal the properties of respondent the respondent

cannot take back such unscrupulous person into its employment as it shall send wrong signals amongst the other workers is the argument of the respondent. Respondent has lost confidence on the petitioner. The most important element of trust, confidence faith are essential for the employer employee relationship that trust and faith are completely lost and the petitioner cannot be reinstated.

As per 2009 LLR 1209 : Punjab and Haryana High Court

Loss of confidence management cannot retain workers who have committed theft so there is no possibility to reinstate the petitioner into the respondent management.

9. It is stated on the side of the respondent that Ex.R2 and other exhibits are not mentioned in the reply letter which was filed before the Conciliation Officer so those documents are forged by the respondent management for the purpose of this case. It is not stated on the side of the petitioner that what was the enmity and what was the reason for the management to foist false case against the petitioner. Without proving the enmity there is no possibility to believe that the exhibits are forged by the respondents. Another argument put forward by the petitioner is that no action was taken against the employees who were also responsible for loading excess materials into the carrier. Admittedly, the petitioner was the person who was responsible for loading the material into the carrier as per the indent so there is no necessity to take action against the other employees who have loaded the excess material into the lorry. Taking into consideration of all above said aspects that there is every possibility to believe that Ex.R1 resignation letter was given by the petitioner and there is no sufficient evidence to prove that the resignation letter was obtained by use of force and coercion. Since the petitioner had voluntarily resigned his job and resignation letter was accepted by management and there is no possibility to allow this industrial dispute. The allegation of theft against the petitioner is proved by oral and documentary evidence so, there is no possibility to reinstate the petitioner in his service, with the continuity of service and back wages. Since the resignation letter is given voluntary by the petitioner, there is no possibility to set aside the resignation letter dated 20-1-2011.

10. In the result, the claim made by the petitioner is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 7th day of March 2014.

S. MARY ANSELAM,
Presiding Officer,
Labour Court (FAC), Puducherry.

List of petitioner's witness:

PW.1 — 22-10-2012 — N. Chandiramogane

List of respondent's witnesses:

RW.1 — 15-3-2013 — R. Vijaylaxmi

RW.2 — 10-7-2013 — S. Kuppusamy

RW.3 — 10-7-2013 — K. Chandrasekar

RW.4 — 10-7-2013 — V. Veeramani

List of petitioner's exhibits:

Ex.P1 — Payslip of the petitioner for the month of October 2010.

Ex.P2 — Relieving letter issued to petitioner by respondent, dated 21-1-2011.

Ex.P3 — Copy of letter given by petitioner to respondent, dated 21-1-2011.

Ex.P4 — Copy of letter given by petitioner to Labour Officer (Conciliation), dated 21-1-2011.

Ex.P5 — Copy of letter sent by Labour Union to Labour Officer (Conciliation), dated 24-1-2011.

Ex.P6 — Copy of notice of enquiry/conciliation from Labour Officer (Conciliation), dated 17-2-2011.

Ex.P7 — Reply version of the respondent in tamil language, dated 14-2-2011.

Ex.P8 — Rejoinder of the petitioner to his letter, dated 2-5-2011.

Ex.P9 — Additional counter of the respondent, dated 26-5-2011.

Ex.P10 — Report on failure of Conciliation, dated 28-7-2011.

List of respondent's exhibits:

Ex.R1 — Copy of the letter given by petitioner to respondent, dated 20-1-2011.

Ex.R2 — FG Plan, dated 20-1-2011.

Ex.R3 — Delivery note of Hindustan Unilever Limited, dated 20-1-2011.

Ex.R4 — Photocopy of the shift schedule, dated 14-1-2011.

Ex.R5 — Photocopy of the list of baggage counted and hand written by Mr. K.Chandrasekar after unloading the boxes from the lorry No. TN28AA0235, dated 20-1-2011.

Ex.R6 — Photocopy of the list of baggage counted and hand written by Mr. Kuppusamy after unloading the boxes from the lorry No. TN28AA0235 along with his letter, dated 20-1-2011.

Ex.R7 — Photocopy of the list of baggage counted and hand written by petitioner after unloading the boxes from the lorry No. TN28AA0235, dated 20-1-2011.

Ex.R8 — Photocopy of the list of baggage counted and hand written by Mr. Veeramani after unloading the boxes from the lorry No. TN28AA0235, dated 20-1-2011.

Ex.R9 — Photocopy of the list of baggage counted and hand written by Mr.Gurunathan after unloading the boxes from the lorry No. TN28AA0235 which was acknowledged by the petitioner herein, dated 20-1-2011.

Ex.R10 — Photocopy of the list of baggage counted and hand written by Mr. Pannerselvam after unloading the boxes from the lorry No. TN28AA0235 dated 20-1-2011.

Ex.R11 — Photocopy of the list of baggage counted and hand written by Mr. V. Selvam after unloading the boxes from the lorry No. TN28AA0235, dated 20-1-2011.

Ex.R12 — Photocopy of the list of baggage counted and hand written by Mr. Sedhupathi after unloading the boxes from the lorry No. TN28AA0235 dated 20-1-2011.

Ex.R13 — Photocopy of the list of baggage counted and hand written by Mr. Thamizhmani (Driver of the vehicle) after unloading the boxes from the lorry No. TN28AA0235, dated 20-1-2011.

Ex.R14 — Photocopy of the consignment note for Varun Logistics along with Stock Transfer Note, Loading counting sheet and Delivery Note, dated 20-1-2011.

Ex.R15 — Photocopy of letter sent by respondent to the Superintendent of Police (Rural), Thavalakuppam, dated 24-1-2011.

S. MARY ANSELAM,
Presiding Officer,
Labour Court (FAC), Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 72/Lab./AIL/J/2014, dated 21st April 2014)

NOTIFICATION

Whereas, the award in I. D. (L) No. 100/2012, dated 5-9-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Sunbeam Generators Thozhilalargal Sangam (Affiliated with Bharathiya Mazdoor Sangam), Puducherry against the Managing Director, Sunbeam Generators (P) Ltd., Puducherry, over non-employment of 5 workmen viz., (1) K. Dakshinamoorthy, (2) N. Siva, (3) A. Sankar, (4) P. Mukunthan and (5) I. Raja has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab/L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Thursday, the 5th day of September 2013.

I.D. (L) No. 100/2012

The President,
Sunbeam Generators Thozhilalargal
Sangam, Puducherry. . . Petitioner

Versus

The Managing Director,
Sunbeam Generator (P) Ltd.,
Koodapakkam, Puducherry . . Respondent

This industrial dispute coming on this day before me for hearing in the presence of Thiru A.K. Thirumurugan, Advocate for the petitioner, Thiru R. Ilanchelian and Ms. R. Thilagavathi, Advocates for the respondent, upon perusing the case records, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry vide G.O. Rt. No. 215/AIL/Lab./J/2012, dated 10-12-2012 of the Labour Department, Puducherry to resolve the following dispute between the petitioners and the respondent, viz.,

(1) Whether the dispute raised by the petitioner union Sunbeam Generators Thozhilalargal Sangam (Affiliated with Bharathiya Mazdoor Sangam) against the management of M/s. Sunbeam Generators Private Limited, Puducherry, over non-employment of 5 workmen viz., Thiruvalargal (1) K. Dakshinamoorthy, (2) N. Siva, (3) A. Sankar, (4) P. Mukunthan and (5) I. Raja is justified?

(2) If justified, to what relief the petitioners are entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. Notice was ordered to be issued to the respondent. Thiru R. Ilanchezhian, Advocate filed Form 'F' for the respondent. The above matter was posted for filing of counter by the respondent to 8-3-2013, 27-3-2013, 3-4-2013, 26-4-2013, 24-5-2013, 31-5-2013, 5-6-2013, 12-6-2013, 28-6-2013, 10-7-2013, 24-7-2013, 5-8-2013, 12-8-2013 and 14-8-2013. But, in spite of several opportunities given, no counter was filed on the side of the respondent. Today the respondent was called absent and set *ex parte*.

3. The President of the petitioner union was examined as PW.1 and Ex.P1 to Ex.P5 were marked. The documents filed under Ex.P1 to Ex.P5 by the petitioner side are proved their case. Hence, the respondent is directed to reinstate the petitioner into service with full back wages and continuity of service and other benefits with costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 5th day of September 2013.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

List of witness examined for the petitioner :

PW.1 — 3-9-2013 — Jayachandran

List of witness examined for the respondent : Nil

List of exhibits marked for the petitioner :

Ex.P1 — Copy of the E.S.I. identity card of Dakshinamoorthy.

Ex.P2 — Copy of the identity card of the company

Ex.P3 — Copy of the E.S.I. identity card of Siva

Ex.P4 — Copy of the provident fund receipt of Raja.

Ex.P5 — Copy of the appointment letter of Mugunthan.

List of exhibits marked for the respondent : Nil

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.